



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Oliver B. Hall, Esq.
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Washington, DC 20009

APR 26 2010

RE: MUR 6021
Democratic National Committee and
Andrew Tobias, in his official capacity as
treasurer; et al.

Dear Mr. Hall:

On April 13, 2010, the Federal Election Commission ("the Commission") reviewed the allegations in your complaint dated May 30, 2008, and subsequent supplements, and on the basis of the information provided in your complaint and information provided by the respondents, voted to exercise its prosecutorial discretion and dismiss this matter as to The Ballot Project, The National Progress Fund, Uniting People for Victory, and Americans for Jobs, and dismiss this matter as to America Coming Together with respect to the allegation that America Coming Together violated 434(b) by failing to report ballot expenditures. *See Heckler v. Chaney*, 470 U.S. 821 (1985). The Commission found there is no reason to believe that America Coming Together violated 2 U.S.C. §§ 433, 434(b) and 441a(1)(A) with respect to the allegations that it failed to register with the Commission and made an undisclosed excessive in-kind contribution. The Commission also dismissed the complaint as to all other people or entities named in the complaint, as supplemented.

In addition, the Commission found there is no reason to believe that the Democratic National Committee and Andrew Tobias, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f), 441b and 434(b); no reason to believe that Kerry for President 2004, Inc. and David Thorne, in his official capacity as treasurer, violated 2 U.S.C. §§ 441b, 441a(f) and 434(b); no reason to believe that Kerry-Edwards 2004, Inc. and David Thorne, in his official capacity as treasurer, violated 2 U.S.C. §§ 441b, 441a(f) and 434(b); and no reason to believe that John Kerry violated the Federal Election Campaign Act of 1971, as amended, or the Commission's regulations. Finally, on April 13, 2009, the Commission closed the file as to all respondents, other persons and entities named in the complaint, as supplemented.

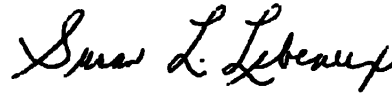
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Oliver B. Hall
MUR 6021
Page 2

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Seven Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,



Susan L. Lebeaux
Assistant General Counsel

Enclosures:

Factual and Legal Analyses (7)

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT:** John Kerry **MUR 6021**
5 Kerry for President 2004, Inc. and
6 David Thorne, in his official capacity as treasurer
7 Kerry-Edwards 2004, Inc. and
8 David Thorne, in his official capacity as treasurer
9

10 **I. INTRODUCTION**

11
12 The complaint in this matter alleges a concerted effort to deny ballot access in 2004 to
13 Ralph Nader and Peter Miguel Camejo ("Nader-Camejo") by, and for the purpose of, benefiting
14 John Kerry, Kerry for President 2004, Inc. and Kerry-Edwards 2004, Inc. (collectively "the
15 Kerry Committee"), in which the Democratic National Committee ("DNC"); at least fifty-three
16 law firms and ninety-five lawyers; and more than twenty-six other organizations and individuals
17 allegedly participated. The complaint is 575 pages long, with 100 pages of allegations and 475
18 pages of exhibits, supplemented by a 100-page 2008 Presentment by a Pennsylvania state grand
19 jury that charges a former Pennsylvania state representative, a former Pennsylvania House
20 Minority Whip, and ten staffers who worked for the former Pennsylvania state representative and
21 for the Pennsylvania House Democratic Caucus, with a "concerted plan to use taxpayer funds,
22 employees, and resources for political campaign purposes" between 2004 and 2007.

23 The complaint is only one of several actions the complainant has initiated alleging
24 violations of law stemming from an alleged concerted action to keep Nader-Camejo off the 2004
25 Presidential ballot in several states. Starting in 2007, Mr. Nader made the same factual
26 allegations in separate federal lawsuits. *See Nader v. Democratic Nat'l Comm.*, 590 F.Supp.2d
27 164 (D.D.C. 2008); *Nader v. Democratic Nat'l Comm.*, 555 F.Supp.2d 137 (D.D.C. 2008); and
28 *Nader v. McAuliffe*, 549 F.Supp.2d 760 (E.D. Va. 2008). In the lawsuits, Nader based his claims
29 on abuse of process, malicious prosecution, conspiracy to abuse process and malicious

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1 prosecution, violation of his constitutional right to run for federal office and his supporters'
2 constitutional rights to vote for him under 42 U.S.C. § 1983, and conspiracy to violate 42 U.S.C.
3 § 1983. The district courts dismissed these cases on various grounds, including failure to state a
4 claim, lack of subject matter jurisdiction, constitutional grounds, and *res judicata*. See *Nader v.*
5 *Democratic Nat'l Comm.*, 555 F.Supp.2d 137 (D.D.C. May 27, 2008); *Nader v. Democratic*
6 *Nat'l Comm.*, 590 F.Supp.2d 164 (D.D.C. December 22, 2008); and *Nader v. McAuliffe*, 593
7 F.Supp.2d 95 (D.D.C. January 7, 2009). Recently, the U.S. Court of Appeals for the D.C. Circuit
8 affirmed the dismissal of one of Nader's complaints on the grounds that he filed suit outside the
9 statute of limitations. *Nader v. Democratic Nat. Committee*, 567 F.3d 692 (D.C.Cir. June 9,
10 2009), and denied Mr. Nader's petition for an *en banc* reconsideration of that outcome. *Nader v.*
11 *Democratic Nat. Committee*, 567 F.3d 692 (D.C.Cir. July 28, 2009). Nader did not appeal the
12 dismissal of the other two complaints.

13 In the present matter, according to the complaint, the alleged concerted effort to benefit
14 the Kerry Committee resulted in several violations of the Federal Election Campaign Act of
15 1971, as amended (the "Act"). First, the complaint alleges that incorporated law firms provided
16 uncompensated legal services and resources while still paying firm attorneys, the value of which
17 constituted an undisclosed prohibited corporate in-kind contribution to the Kerry Committee, in
18 violation of 2 U.S.C. §§ 434(b) and 441b ("Count 1"). Second, the complaint alleges that the
19 Kerry Committee received, and failed to disclose, prohibited or excessive contributions in
20 connection with the Service Employees International Union ("SEIU") and America Coming
21 Together ("ACT") efforts to deny Nader-Camejo ballot access in Oregon, in violation of 2
22 U.S.C. §§ 441(b) and 441a(f) ("Count 2").

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As discussed in more detail below, Count 1's allegation is general and not supported by specific facts and therefore fails to provide reason to believe that a violation of the Act occurred and open an investigation into whether corporate law firms made prohibited in-kind contributions to the Kerry Committee that the Kerry Committee failed to report. As to Count 2, this allegation, as a whole, also fails to provide reason to believe a violation occurred, and thus insufficient grounds to investigate. In addition, while the activity at issue occurred in 2004, the complaint was not filed until 2008. Thus, among other reasons, the age of the alleged violations would create problems of proof and raise obstacles under the five-year statute of limitations. Therefore, the Commission found no reason to believe that John Kerry violated the Federal Election Campaign Act of 1971, as amended, or the Commission's regulations. The Commission also found no reason to believe that Kerry for President 2004, Inc., and David Thorne, in his official capacity as treasurer, and Kerry-Edwards 2004, Inc. and David Thorne, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b), 441a(f) and 441b.

II. FACTUAL AND LEGAL ANALYSIS

A. Count 1: Alleged Undisclosed Corporate Contributions

1. Facts

The Complaint maintains that in order to help the Kerry Committee win the election in 2004, "Respondents" filed 24 complaints and/or intervened in legal or administrative proceedings to challenge Nader-Camejo's nomination papers in 18 states, and they coordinated their efforts with the Kerry Committee, the DNC, and at least 18 state or local Democratic Parties. Complaint at 2-3. At least fifty-three law firms (and ninety-five lawyers nationwide) allegedly provided legal services for this effort. *Id.* at 6. Since, according to the complaint, the "vast majority of these law firms are incorporated," the value of legal services they provided free

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1 of charge while compensating the firms' attorneys constituted undisclosed prohibited in-kind
2 contributions to the Kerry Committee. Complaint at pp. 5-6. Paragraphs 24-73, 75-77, 79-86,
3 88-93, 97-108, and 287 of the complaint name law firms and attorneys participating in ballot
4 challenges. Paragraph 287 alleges that the Reed Smith law firm allegedly donated 18 attorneys
5 to the Pennsylvania lawsuit and billed their time to "charity," without charging any clients.

6 In support, the complaint alleges that a Section 527 organization, the Ballot Project,
7 worked "in conjunction with" the Kerry Committee, and that its president reportedly stated that
8 "[w]e're doing everything we can to facilitate lawyers in over 20 states," and estimated that \$2
9 million in free legal services had been received. Complaint at 51. The complaint further alleges
10 that four attorneys "affiliated" with Lawyers for Kerry, a voter monitoring project through which
11 attorneys volunteered their time and services at polling stations, represented parties in the ballot
12 challenge lawsuits. According to the complaint, the Lawyers for Kerry sign-up form on the
13 Kerry Committee website stated that "We may provide your contact information to the [DNC]
14 for ballot protection efforts," thus "providing further confirmation of direct coordination between
15 the Kerry" Committee, "and the lawyers involved in the ballot access litigation." *Id.* at 50;
16 Exhibit 30. In addition, the complaint relies on e-mails that allegedly show that the Kerry
17 Committee staff assisted ballot challenge lawsuits. *Id.* at 7-8, 48-49. In response to the
18 complaint, the Kerry Committee denied the allegations in Count 1, and requested that the
19 Commission dismiss the complaint.

20 **2. Analysis**

21 **a. Alleged Donation of Legal Services by Corporate Law Firms**

22 The Act prohibits corporations from making any "contribution." 2 U.S.C. § 441(b)(a). The Act
23 defines "contribution" as the provision of something of value "for the purpose of influencing any

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1 election for Federal office.” 2 U.S.C. § 431(8)(A)(i). A “contribution” includes the “payment by
2 any person of compensation for the personal services of another person which are rendered to a
3 political committee without charge for any purpose.” 2 U.S.C. § 431(8)(A)(ii). The Act
4 specifies that legal services rendered to or on behalf of an authorized committee of a candidate
5 are neither a contribution nor an expenditure “if the person paying for such services is the regular
6 employer of the individual rendering such services and if such services are solely for the purpose
7 of ensuring compliance with this Act or chapter 95 or chapter 96 of title 26.” 2 U.S.C. §§
8 431(8)(B)(viii)(II) and (9)(B)(vii)(II); 11 C.F.R. §§ 100.86 and 146. Further, the value of
9 services provided without compensation by any individual who volunteers on behalf of a
10 candidate or political committee is not a contribution or an expenditure. 11 C.F.R. §§ 100.74
11 and 100.111 (“volunteer exemption”).

12 First, even assuming that some of the fifty-three law firms and ninety-five attorneys
13 named in Paragraphs 24-73, 75-77, 79-86, 88-93, 97-108, and 287 of the complaint assisted in
14 legal challenges free of charge to the Democratic state and local parties and individuals who filed
15 the ballot challenges, the complaint does not specify, with one exception, which firms allegedly
16 provided free services or to whom, which of those firms are incorporated, and of those, which
17 firms compensated their attorneys who worked on the ballot challenges. Without such
18 information, and given that any free attorney services may have been provided by volunteers
19 without any sponsorship from their employer, there is no reason to believe a violation of the Act
20 occurred, and therefore insufficient grounds to investigate the 2004 activities and billing
21 practices of the fifty-three law firms and ninety-five attorneys.

22 As for the only law firm specifically alleged to have provided free services to benefit the
23 Kerry Committee, the information in the complaint is contradictory. Specifically, the allegation

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1 is that the Reed Smith law firm reportedly billed its costs for the Pennsylvania ballot challenge to
2 "charity, without charging any client." That allegation is based on an October 1, 2004, article in
3 the *American Lawyer*. Complaint at 50, Paragraph 287 and Exhibit 41. However, in response to
4 claims asserted in that article and another press report that attorneys worked on the ballot
5 challenges free of charge for the non-partisan purpose of ensuring ballot integrity, the complaint
6 also alleges that the DNC's disclosure reports show that it paid Reed Smith \$136,142 in
7 "political consulting" and "legal consulting" fees in October and November 2004. See Paragraph
8 286. The contradictory allegations in the complaint as to whether Reed Smith was paid for its
9 work and the lack of specific facts in the complaint indicating that the law firm paid its attorneys
10 for their work on the ballot petition charges, as opposed to those attorneys having volunteered
11 their time without compensation, render the only specific allegation in Count 1 insufficient to
12 create a reason to believe a violation of the Act occurred and to warrant an investigation.

13 Even if there were corporate law firms that provided free services to ballot challengers
14 while compensating their attorneys, the complaint does not present facts sufficient to support that
15 those services constituted undisclosed in-kind contributions accepted or received by the Kerry
16 Committee. Merely alleging that the Ballot Project worked "in conjunction with" the Kerry
17 Committee, without supporting facts suggesting that the Ballot Project's efforts were on behalf
18 of the Kerry Committee or other indicia of concerted activity, does not provide a reason to
19 believe a violation of the Act occurred, and thus fails to provide sufficient grounds to investigate.
20 This is particularly so, where, as here, the allegation has been specifically refuted and there is no
21 information to the contrary.

22 b. "Lawyers for Kerry"

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1 Similarly, the fact that attorneys “affiliated” with Lawyers for Kerry, a voter monitoring
2 project through which attorneys volunteered their time and services at polling stations on
3 election day, may have also represented parties in the ballot challenge lawsuits, and that the
4 Lawyers for Kerry sign-up form on the Kerry Committee website stated that “[w]e may provide
5 your contact information to the [DNC] for ballot protection efforts,” do not adequately tie the
6 Kerry Committee to any effort to procure or receive undisclosed free legal services from
7 corporate law firms. Indeed, the term “ballot protection efforts” is consistent with the stated aim
8 of Lawyers for Kerry, which was focused on ensuring that voters—particularly Kerry voters—
9 would be able to cast their votes on election day, not the challenging of ballot petitions. *See*
10 Mark Donald, *Answering the Call: Texas Democratic Lawyers Join Effort to Protect the Vote*,
11 *Texas Lawyer*, October 18, 2004. The website language, without more, cannot be extrapolated
12 into evidence that the Kerry Committee was involved in an effort to obtain free corporate legal
13 services in order to prevent Nader from being placed on the ballot. That some attorneys who
14 were involved in Lawyers for Kerry may also have worked on ballot petition challenges does
15 not, without more, lead to an inference that the Kerry Committee may have received prohibited
16 in-kind contributions, as the available information does not indicate that the lawyers in question
17 received compensation from corporate law firms for working on the ballot challenges, and if so,
18 that the Kerry Committee had any direct connection to those lawyers’ activities.

19 **c. Other Allegations**

20 Likewise, the other information included in the complaint does not give rise to a reason to
21 believe that a violation of the Act occurred as to Count 1, and therefore does not warrant an
22 investigation. Exhibit 7 of the complaint includes an e-mail communication from Caroline
23 Adler, who is described as a DNC and Kerry Committee employee, to DNC employees who

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1 helped prepare challenges to Nader-Camejo's nomination papers. The e-mail, with the subject
2 entitled "DNC's Anti-Nader phone script," includes an attachment entitled "Script for Nader
3 Petition Signers," which DNC employees allegedly used as a guideline when calling to talk to
4 people who signed Nader-Camejo's petitions. Exhibit 9 includes an e-mail from Judy Reardon,
5 the Kerry Committee's deputy national director for Northern New England. According to the
6 complaint, this e-mail indicates that Ms. Reardon herself drafted one of the complaints against
7 Nader-Camejo and coordinated with the state Democratic Party officials and attorneys who filed
8 it. Martha Van Oot, an attorney who represented parties attempting to deny Nader-Camejo ballot
9 access in New Hampshire, replies "Great job, Judy," with her own hand-written revisions
10 attached. New Hampshire Democratic Party Chair and DNC official Kathleen Sullivan, who
11 filed the complaint, was copied on this exchange.

12 In its response, the Kerry Committee states that the allegation that it accepted prohibited
13 corporate contributions in the form of legal services is "false," and that it had every right to pay
14 staffers who engaged in ballot access litigation and to use unlimited volunteer attorneys. Kerry
15 Committee Response at 6-7. It asserts that its "limited involvement in ballot access litigation and
16 its awareness of the litigation engaged in by others—both on a volunteer and paid basis—simply
17 does not constitute a violation of the Act." *Id.* at 8. Further, it states that the complaint does not
18 point to any specific facts indicating that attorney volunteers were compensated in any way for
19 their volunteer work. *Id.* at 7. There is no information to the contrary.

20 Complainant maintains in his cover letter to the supplement that the 2008 Pennsylvania
21 Grand Jury Presentment supports his allegations that unnamed "Respondents" specifically
22 intended to benefit "the Kerry Committee by challenging the Nader-Camejo Pennsylvania ballot
23 petitions," and that unnamed "Respondents" made undisclosed contributions to the Kerry

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1 Committee. However, the Presentment does not contain facts supporting alleged undisclosed
2 prohibited corporate contributions by law firms to the Kerry Committee. The Presentment states
3 at page 55, as an introduction to the description of an alleged scheme to have state employees
4 work on the Nader challenge at taxpayer expense, that “[i]t was generally assumed, in
5 Democratic circles, that Nader’s appearance on the ballot would be detrimental to Democratic
6 Presidential Candidate John Kerry, since Nader would siphon votes from Kerry.” From this
7 statement, the supplement purportedly derives support for the complaint’s allegations that
8 unnamed “Respondents specifically intended to benefit” the Kerry Committee and “made
9 unlawful and unreported contributions to” it. Supplement at 10. Moreover, complainant asserts
10 that a law firm, not named in the Presentment, which was involved in the Pennsylvania Nader
11 challenge was “retained by or received payment from the Respondents who orchestrated
12 Respondents’ nationwide effort to deny ballot access to Nader-Camejo” to support “the inference
13 that Respondents’ related conduct in 17 other states was likewise intended to benefit” the Kerry
14 Committee, and that the law firm made a contribution to the Kerry Committee. *Id.* at 10-12.¹
15 However, the Presentment makes no findings as to the Kerry Committee or the law firm, and
16 does not link any of the activities charged to any activities or knowledge of the Kerry
17 Committee. Therefore, it adds no support to complainant’s allegations in Count 1.

18 **d. Conclusion**

19 The Commission has stated that “unwarranted legal conclusions from asserted facts or
20 mere speculation will not be accepted as true,” and “[s]uch purely speculative charges, especially

¹ Although acknowledging that the Presentment does not name the law firm, the complainant states that there is “little doubt” that Reed Smith was the law firm that filed the challenge to the Nader-Camejo 2004 Pennsylvania nomination papers. Cover letter to Supplement at 12. The cover letter to the supplement goes on to acknowledge that the Presentment also does not specifically state that the attorneys who filed the Pennsylvania charge knew it was prepared using funds and resources misappropriated from the taxpayers, but then asserts that the Presentment suggested they knew or should have known. *Id.* Even if that were so, that suggestion does not constitute a FECA violation.

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when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred.” See Statement of Reasons, MUR 4960 (Hillary Rodham Clinton for Senate Exploratory Committee, issued December 21, 2000) (citations omitted). Here, without specific facts suggesting that (1) attorneys from corporate law firms assisting in Nader ballot challenges were compensated by their firms for this work, and (2) even if they were, that the Kerry Committee played a role in this activity, rather than just being the indirect beneficiary, there is nothing left but speculative charges that have been directly refuted, providing an insufficient basis to find reason to believe that a violation of the Act occurred, and therefore an insufficient basis for an investigation.

Accordingly, the Commission has determined to find no reason to believe that John Kerry violated the Federal Election Campaign Act of 1971, as amended, or the Commission’s regulations. The Commission has also determined to find no reason to believe that Kerry for President 2004, Inc., and David Thorne, in his official capacity as treasurer, and Kerry-Edwards 2004, Inc. and David Thorne, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441b(a) by accepting, and failing to disclose, prohibited contributions from corporate law firms.

B. Count 2: Allegations Relating to the Activities of ACT and SEIU

1. Factual Background

Count 2 of the complaint alleges that the ACT and SEIU’s efforts to prevent Nader-Camejo from being placed on the ballot in the State of Oregon, resulted in prohibited and undisclosed contributions and expenditures to the Kerry Committee. Complaint at 93. In support, the complaint refers to an August 16, 2004, blog entry from ACT employee William Gillis, who stated that ACT shared the Portland, Oregon, office space with political campaign

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1 staff from SEIU, and that he witnessed “higher echelons of both staffs” organize “a concerted
2 effort among the ACT/SEIU staff to attack the Nader petition drive,” by signing petitions where
3 petitioners were required to sign, and then scratching out the signatures, thereby invalidating the
4 entire petition. Complaint at 74.

5 **2. Analysis**

6 The Act prohibits labor organizations like SEIU from making contributions to any
7 candidate, campaign committee, or political party or organization in connection with any election
8 to federal election. 2 U.S.C. § 441b. In 2004, the Act also limited contributions by entities like
9 SEIU’s PAC to any candidate or his or her authorized political committee with respect to any
10 election for federal office, which, in the aggregate, exceeded \$5,000. 2 U.S.C.
11 § 441a(2)(A) (2004).

12 The allegations in Count 2 of the complaint are insufficient, as the complaint does not
13 allege, and the available information does not suggest, that SEIU’s and ACT’s activities in
14 Oregon were coordinated with the Kerry Committee. Further, the complaint’s allegation that
15 ACT and SEIU shared facilities and organized “an attack” on the Nader petition drive similarly
16 provides no link between such factual allegations and the Kerry Committee.

17 Accordingly, the Commission has determined to find no reason to believe Kerry for
18 President 2004, Inc., and David Thorne, in his official capacity as treasurer, and Kerry-Edwards
19 2004, Inc. and David Thorne, in his official capacity as treasurer, violated 2 U.S.C. §§ 441b and
20 441a(f) in connection with Count 2.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Democratic National Committee and MUR 6021
Andrew Tobias, in his official capacity as treasurer

I. INTRODUCTION

The complaint in this matter alleges a concerted effort to deny ballot access in 2004 to Ralph Nader and Peter Miguel Camejo ("Nader-Camejo") for the purpose of benefiting Kerry for President 2004, Inc. and Kerry-Edwards 2004, Inc. (collectively "the Kerry Committee") by the Democratic National Committee and Andrew Tobias, in his official capacity as treasurer ("DNC"). The complaint is 575 pages long, with 100 pages of allegations and 475 pages of exhibits, supplemented by a 100-page 2008 Presentment by a Pennsylvania state grand jury that charges a former Pennsylvania state representative, a former Pennsylvania House Minority Whip, and ten staffers who worked for the former Pennsylvania state representative and for the Pennsylvania House Democratic Caucus, with a "concerted plan to use taxpayer funds, employees, and resources for political campaign purposes" between 2004 and 2007.

The complaint is only one of several actions the complainant has initiated alleging violations of law stemming from an alleged concerted action to keep Nader-Camejo off the 2004 Presidential ballot in several states. Starting in 2007, Mr. Nader made the same factual allegations in separate federal lawsuits. *See Nader v. Democratic Nat'l Comm.*, 590 F.Supp.2d 164 (D.D.C. 2008); *Nader v. Democratic Nat'l Comm.*, 555 F.Supp.2d 137 (D.D.C. 2008); and *Nader v. McAuliffe*, 549 F.Supp.2d 760 (E.D. Va. 2008). In the lawsuits, Nader based his claims on abuse of process, malicious prosecution, conspiracy to abuse process and malicious prosecution, violation of his constitutional right to run for federal office and his supporters' constitutional rights to vote for him under 42 U.S.C. § 1983, and conspiracy to violate 42 U.S.C.

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1 § 1983. The district courts dismissed these cases on various grounds, including failure to state a
2 claim, lack of subject matter jurisdiction, constitutional grounds, and *res judicata*. See *Nader v.*
3 *Democratic Nat'l Comm.*, 555 F.Supp.2d 137 (D.D.C. May 27, 2008); *Nader v. Democratic*
4 *Nat'l Comm.*, 590 F.Supp.2d 164 (D.D.C. December 22, 2008); and *Nader v. McAuliffe*, 593
5 F.Supp.2d 95 (D.D.C. January 7, 2009). Recently, the U.S. Court of Appeals for the D.C. Circuit
6 affirmed the dismissal of one of Nader's complaints on the grounds that he filed suit outside the
7 statute of limitations. *Nader v. Democratic Nat. Committee*, 567 F.3d 692 (D.C.Cir. June 9,
8 2009), and denied Mr. Nader's petition for an *en banc* reconsideration of that outcome. *Nader v.*
9 *Democratic Nat. Committee*, 567 F.3d 692 (D.C.Cir. July 28, 2009). Nader did not appeal the
10 dismissal of the other two complaints.

11 In the present matter, according to the complaint, the alleged concerted effort to benefit
12 the Kerry Committee resulted in violations of the Federal Election Campaign Act of 1971, as
13 amended (the "Act"). The complaint alleges that law firms provided uncompensated legal
14 services and resources while still paying firm attorneys, the value of which constituted an
15 undisclosed prohibited corporate in-kind contribution, in violation of 2 U.S.C. §§ 434(b) and
16 441b ("Count 1"). The complaint further alleges that Service Employees International Union
17 ("SEIU") and America Coming Together ("ACT") made prohibited and excessive contributions
18 in connection with their coordinated efforts to deny Nader-Camejo ballot access in Oregon, in
19 violation of 2 U.S.C. §§ 441(b) and 441a(f) ("Count 2"). Both allegations implicate the DNC as
20 part of the general conspiracy to deny Nader-Camejo ballot access during the 2004 election
21 cycle, and may suggest that the DNC itself accepted and failed to disclose prohibited
22 contributions, as well as the Kerry Committee.

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As discussed in more detail below, Count 1's allegation is general and not supported by specific facts and therefore fails to provide a reason to believe that a violation of the Act occurred and open an investigation into whether the DNC was involved in a scheme whereby corporate law firms made prohibited in-kind contributions to the Kerry Committee that the Kerry Committee failed to report. As to Count 2, this allegation, as a whole, also fails to provide a reason to believe that a violation occurred, and thus insufficient grounds to investigate. In addition, while the activity at issue occurred in 2004, the complaint was not filed until 2008. Thus, among other reasons, the age of the alleged violations would create problems of proof and raise obstacles under the five-year statute of limitations. Therefore, the Commission found no reason to believe that the Democratic National Committee and Andrew Tobias, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f), 441b and 434(b).

II. FACTUAL AND LEGAL ANALYSIS

A. Count 1: Alleged Undisclosed Corporate Contributions

1. Facts

The Complaint maintains that in order to help the Kerry Committee win the election in 2004, the DNC coordinated their efforts with the Kerry Committee, and at least 18 state or local Democratic Parties to file 24 complaints and/or intervened in legal or administrative proceedings to challenge Nader-Camejo's nomination papers in 18 states. Complaint at 2-3. At least fifty-three law firms (and ninety-five lawyers nationwide) allegedly provided legal services for this effort. *Id.* at 6. Since, according to the complaint, the "vast majority of these law firms are incorporated," the value of legal services they provided free of charge while compensating the firms' attorneys constituted undisclosed prohibited in-kind contributions to the Kerry Committee. Complaint at pp. 5-6. Paragraphs 24-73, 75-77, 79-86, 88-93, 97-108, and 287 of

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1 the complaint name law firms and attorneys participating in ballot challenges. Paragraph 287
2 alleges that the Reed Smith law firm allegedly donated 18 attorneys to the Pennsylvania lawsuit
3 and billed their time to “charity,” without charging any clients.

4 In support, the complaint alleges that the law firm attorneys generated \$2 million in free
5 legal services. Complaint at 51. In addition, the complaint relies on the sworn testimony of
6 Dorothy Melanson, Maine Democratic chair and DNC official, that the DNC paid the costs of
7 her ballot challenge lawsuit in Maine, and on e-mails that allegedly show that the DNC and
8 Kerry Committee staff assisted ballot challenge lawsuits. *Id.* at 7-8, 48-49. In response to the
9 complaint, the DNC denied the allegations in Count 1, and requested that the Commission
10 dismiss the complaint.

11 **2. Analysis**

12 The Act prohibits corporations from making any “contribution.” 2 U.S.C. § 441(b)(a).
13 The Act defines “contribution” as the provision of something of value “for the purpose of
14 influencing any election for Federal office.” 2 U.S.C. § 431(8)(A)(i). A “contribution” includes
15 the “payment by any person of compensation for the personal services of another person which
16 are rendered to a political committee without charge for any purpose.” 2 U.S.C. § 431(8)(A)(ii).
17 The Act specifies that legal services rendered to or on behalf of an authorized committee of a
18 candidate are neither a contribution nor an expenditure “if the person paying for such services is
19 the regular employer of the individual rendering such services and if such services are solely for
20 the purpose of ensuring compliance with this Act or chapter 95 or chapter 96 of title 26.” 2
21 U.S.C. §§ 431(8)(B)(viii)(II) and (9)(B)(vii)(II); 11 C.F.R. §§ 100.86 and 146. Further, the value
22 of services provided without compensation by any individual who volunteers on behalf of a

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1 candidate or political committee is not a contribution or an expenditure. 11 C.F.R. §§ 100.74
2 and 100.111 (“volunteer exemption”).

3 First, even assuming that some of the fifty-three law firms and ninety-five attorneys
4 named in Paragraphs 24-73, 75-77, 79-86, 88-93, 97-108, and 287 of the complaint assisted in
5 legal challenges free of charge to the Democratic state and local parties and individuals who filed
6 the ballot challenges, the complaint does not specify, with one exception, which firms allegedly
7 provided free services or to whom, which of those firms are incorporated, and of those, which
8 firms compensated their attorneys who worked on the ballot challenges. Without such
9 information, and given that any free attorney services may have been provided by volunteers
10 without any sponsorship from their employer, there is no reason to believe a violation of the Act
11 occurred, and therefore insufficient grounds to investigate the 2004 activities and billing
12 practices of the fifty-three law firms and ninety-five attorneys.

13 As for the only law firm specifically alleged to have provided free services to benefit the
14 Kerry Committee, the information in the complaint is contradictory. Specifically, the allegation
15 is that the Reed Smith law firm reportedly billed its costs for the Pennsylvania ballot challenge to
16 “charity, without charging any client.” That allegation is based on an October 1, 2004, article in
17 the *American Lawyer*. Complaint at 50, Paragraph 287 and Exhibit 41. However, in response to
18 claims asserted in that article and another press report that attorneys worked on the ballot
19 challenges free of charge for the non-partisan purpose of ensuring ballot integrity, the complaint
20 also alleges that the DNC’s disclosure reports show that it paid Reed Smith \$136,142 in
21 “political consulting” and “legal consulting” fees in October and November 2004. See Paragraph
22 286. The contradictory allegations in the complaint as to whether Reed Smith was paid for its
23 work and the lack of specific facts in the complaint indicating that the law firm paid its attorneys

10044271482

1 for their work on the ballot petition charges, as opposed to those attorneys having volunteered
2 their time without compensation, render the only specific allegation in Count 1 insufficient to
3 create a reason to believe a violation of the Act occurred and to warrant an investigation.

4 Likewise, the other information included in the complaint does not give rise to a reason to
5 believe that a violation of the Act occurred as to Count 1, and therefore does not warrant an
6 investigation. With respect to the Melanson testimony, Dorothy Melanson, who filed the Maine
7 challenge, testified that the Democratic Party contacted her and stated that it would support her
8 financially with respect to her challenge. She further testified that she had not spoken to the
9 DNC regarding the specific amount of funding she would receive in connection with the ballot
10 challenge, and contrary to the allegation in the complaint, stated that she brought the challenge
11 on her own and was not directed to do so by the DNC. *See* Complaint at 8 and Exhibit 1. In its
12 response, the DNC maintains that Ms. Melanson filed one of the two ballot access complaints on
13 her own behalf, and other DNC staff filed similar complaints on their own behalf without DNC
14 direction or control. DNC Response at 6. The DNC states that there is no evidence that anything
15 other than volunteer legal services were provided to the ballot petition challengers, "it was not a
16 party in any of the ballot access petition challenges," and that it "did not receive and fail to report
17 any in-kind legal services from law firms representing ballot access petition challengers." *See*
18 DNC Response at 6-8. *Id.* The most the Melanson testimony suggests is that the DNC may have
19 paid some or all of her legal costs, not that it recruited and obtained free legal services, and it
20 fails to show any link at all to the Kerry Committee.

21 Similarly, the e-mails cited in the complaint as evidence of a coordinated scheme do not
22 specifically tie the DNC to the making of prohibited in-kind corporate contributions. Exhibit 7
23 of the complaint includes an e-mail communication from Caroline Adler, who is described as a

10044271483

1 DNC and Kerry Committee employee, to DNC employees who helped prepare challenges to
2 Nader-Camejo's nomination papers. The e-mail, with the subject entitled "DNC's Anti-Nader
3 phone script," includes an attachment entitled "Script for Nader Petition Signers," which DNC
4 employees allegedly used as a guideline when calling to talk to people who signed Nader-
5 Camejo's petitions. Exhibit 9 includes an e-mail from Judy Reardon, the Kerry Committee's
6 deputy national director for Northern New England. According to the complaint, this e-mail
7 indicates that Ms. Reardon herself drafted one of the complaints against Nader-Camejo and
8 coordinated with the state Democratic Party officials and attorneys who filed it. Martha Van
9 Oot, an attorney who represented parties attempting to deny Nader-Camejo ballot access in New
10 Hampshire, replies "Great job, Judy," with her own hand-written revisions attached. New
11 Hampshire Democratic Party Chair and DNC official Kathleen Sullivan, who filed the
12 complaint, was copied on this exchange.

13 In its response, the DNC states that the e-mails do not indicate that the DNC itself filed
14 the ballot petition challenges, or provide evidence that the DNC accepted corporate in-kind
15 contributions from law firms. DNC Response at 10. There is no information to the contrary.

16 Complainant maintains in his cover letter to the supplement that the 2008 Pennsylvania
17 Grand Jury Presentment supports his allegations that unnamed "Respondents" specifically
18 intended to benefit "the Kerry Committee by challenging the Nader-Camejo Pennsylvania ballot
19 petitions," and that unnamed "Respondents" made undisclosed contributions to the Kerry
20 Committee. However, the Presentment does not contain facts supporting alleged undisclosed
21 prohibited corporate contributions by law firms to the Kerry Committee. The Presentment states
22 at page 55, as an introduction to the description of an alleged scheme to have state employees
23 work on the Nader challenge at taxpayer expense, that "[i]t was generally assumed, in

10044271484

1 Democratic circles, that Nader's appearance on the ballot would be detrimental to Democratic
2 Presidential Candidate John Kerry, since Nader would siphon votes from Kerry." From this
3 statement, the supplement purportedly derives support for the complaint's allegations that
4 unnamed "Respondents specifically intended to benefit" the Kerry Committee and "made
5 unlawful and unreported contributions to" it. Supplement at 10. Moreover, complainant asserts
6 that a law firm, not named in the Presentment, which was involved in the Pennsylvania Nader
7 challenge was "retained by or received payment from the Respondents who orchestrated
8 Respondents' nationwide effort to deny ballot access to Nader-Camejo" to support "the inference
9 that Respondents' related conduct in 17 other states was likewise intended to benefit" the Kerry
10 Committee, and that the law firm made a contribution to the Kerry Committee. *Id.* at 10-12.¹
11 However, the Presentment makes no findings as to the Kerry Committee or the law firm, and
12 does not link any of the activities charged to any activities or knowledge of the Kerry
13 Committee, the DNC, lawyers, or to any actors outside of Pennsylvania. Therefore, it adds no
14 support to complainant's allegations in Count 1.

15 Even if there were corporate law firms that provided free services to ballot challengers
16 while compensating their attorneys, the complaint does not present facts sufficient to support that
17 those services constituted undisclosed in-kind contributions accepted or received by the Kerry
18 Committee. Merely alleging that entities including the DNC worked "in conjunction with" the
19 Kerry Committee, without supporting facts suggesting that its efforts were on behalf of the Kerry
20 Committee or other indicia of concerted activity, does not provide a reason to believe that a

¹ Although acknowledging that the Presentment does not name the law firm, the complainant states that there is "little doubt" that Reed Smith was the law firm that filed the challenge to the Nader-Camejo 2004 Pennsylvania nomination papers. Cover letter to Supplement at 12. The cover letter to the supplement goes on to acknowledge that the Presentment also does not specifically state that the attorneys who filed the Pennsylvania charge knew it was prepared using funds and resources misappropriated from the taxpayers, but then asserts that the Presentment suggested they knew or should have known. *Id.* Even if that were so, that suggestion does not constitute a FECA violation.

1 violation of the Act occurred, and thus fails to provide sufficient grounds to investigate. This is
2 particularly so, where, as here, the allegation has been specifically refuted and there is no
3 information to the contrary.

4 The Commission has stated that “unwarranted legal conclusions from asserted facts or
5 mere speculation will not be accepted as true,” and “[s]uch purely speculative charges, especially
6 when accompanied by a direct refutation, do not form an adequate basis to find reason to believe
7 that a violation of the FECA has occurred.” See Statement of Reasons, MUR 4960 (Hillary
8 Rodham Clinton for Senate Exploratory Committee, issued December 21, 2000) (citations
9 omitted). Here, without specific facts suggesting that (1) attorneys from corporate law firms
10 assisting in Nader ballot challenges were compensated by their firms for this work, and (2) even
11 if they were, that the DNC played a role in this activity, there is nothing left but speculative
12 charges that have been directly refuted, providing an insufficient basis to find reason to believe
13 that a violation of the Act occurred, and therefore an insufficient basis for an investigation.

14 Accordingly, the Commission has determined to find no reason the Democratic National
15 Committee and Andrew Tobias, in his official capacity as treasurer, violated 2 U.S.C.
16 §§ 434(b) and 441b(a) by accepting, and failing to disclose, prohibited contributions from
17 corporate law firms.

18 **B. Count 2: Allegations Relating to the Activities of ACT and SEIU**

19 **1. Factual Background**

20 Count 2 of the complaint alleges that ACT and SEIU’s efforts to prevent Nader-Camejo
21 from being placed on the ballot in the State of Oregon resulted in prohibited and undisclosed
22 contributions and expenditures. Complaint at 93. In support, the complaint refers to an August
23 16, 2004, blog entry from ACT employee William Gillis, who stated that ACT shared the

10044271486

1 Portland, Oregon, office space with political campaign staff from SEIU, and that he witnessed
2 "higher echelons of both staffs" organize "a concerted effort among the ACT/SEIU staff to
3 attack the Nader petition drive," by signing petitions where petitioners were required to sign, and
4 then scratching out the signatures, thereby invalidating the entire petition. Complaint at 74. It
5 also attempts to link SEIU and the DNC by noting that SEIU's Secretary-Treasurer, Anna
6 Burger, is a DNC official, and SEIU both "endorsed and publicly committed its resources to
7 electing Kerry in 2004." Complaint at 76. Exhibit 27 of the complaint lists Ms. Burger as a
8 "member-at-large" on the DNC's membership roster in 2004.

9 Count 2 also alleges that SEIU made an excessive or prohibited contribution to the DNC
10 based on a November 1, 2004, press release entitled "Anatomy of an Election Strategy: The
11 Facts on SEIU's Role in Bringing Home a Victory for America's Working Families," in which
12 SEIU claims that among the specific acts it took to shape the outcome of the 2004 election was
13 giving \$1 million to the DNC. Complaint at 94, Exhibit 60. A separate document attached to the
14 press release specifies that "SEIU contributed \$1,000,000 to fund various DNC activities." *Id.*
15 The DNC did not respond to this aspect of the complaint.

16 2. Analysis

17 The Act prohibits labor organizations like SEIU from making contributions to any
18 candidate, campaign committee, or political party or organization in connection with any election
19 to federal election. 2 U.S.C. § 441b. In 2004, the Act also limited contributions by entities like
20 SEIU's PAC to any candidate or his or her authorized political committee with respect to any
21 election for federal office, which, in the aggregate, exceeded \$5,000. 2 U.S.C.
22 § 441a(2)(A) (2004). With respect to political committees established and maintained by a
23 national political party, which are not the authorized political committees of any candidate, the

10044271487

1 Act also limited contributions by entities like SEIU's PAC to \$15,000 per calendar year.

2 2 U.S.C. § 441a(2)(B).

3 The allegations in Count 2 of the complaint are insufficient for two reasons. First, the
4 complaint does not allege, and the available information does not suggest, that SEIU's and
5 ACT's activities in Oregon were coordinated with the DNC, or any other entity. The fact that
6 Anna Burger, an SEIU official, is also a member-at-large of the DNC, does not, without more,
7 suggest otherwise, as such at-large membership within the DNC does not provide a basis to infer
8 that she was "materially involved" or even aware of material information in the decision-making
9 of the DNC's plans, projects, or needs. 11 C.F.R. § 109.21(d)(2). The available information
10 does not indicate that Ms. Burger was a member of the DNC's Executive Committee, the only
11 committee within the DNC responsible for such decision-making. *See* The Charter and the
12 Bylaws of the Democratic Party of the United States (as amended Jan. 19, 2002). Further, the
13 complaint's allegation that ACT and SEIU shared facilities and organized "an attack" on the
14 Nader petition drive similarly provides no link between such factual allegations and the DNC.

15 Second, with respect to SEIU, the complaint's allegation that SEIU made a prohibited or
16 excessive contribution to the DNC is based solely upon a press release stating that SEIU gave \$1
17 million to the DNC. This statement has a number of possible meanings, and the possibility that
18 SEIU made and intended to publicize a \$1 million contribution to the DNC seems unlikely and
19 has been generally refuted by SEIU in a prior MUR. In MUR 5612 (SEIU), where the
20 Commission found no reason to believe that SEIU or the DNC violated 2 U.S.C. § 441b in
21 connection with a fundraiser that allegedly forwarded the proceeds from the event to the DNC,
22 the complaint relied in part on the same SEIU press release. In response to that complaint, SEIU
23 stated that it had engaged in political activities that did not provide a basis for a complaint, such

10044271488

1 as lobbying, voter education, voter registration, and get-out-the vote drives, but not independent
2 expenditures or electioneering communications. SEIU also stated that no general treasury funds
3 were used to support independent expenditures or contributions. We have no information to the
4 contrary. The FEC disclosure database does not reveal any direct contributions by SEIU itself to
5 the DNC; SEIU's political action committee disclosed contributions totaling only \$30,000 to the
6 DNC during the 2004 election cycle. In the absence of other facts supporting an allegation that
7 the DNC received a prohibited or excessive contribution, the press release alone does not provide
8 reason to believe a violation of the Act occurred, and therefore no justification for an
9 investigation.

10 Accordingly, the Commission has determined to find no reason to believe that the
11 Democratic National Committee and Andrew Tobias, in his official capacity as treasurer,
12 violated 2 U.S.C. §§ 441b and 441a(f) in connection with Count 2.

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: The Ballot Project **MUR 6021**

I. INTRODUCTION

The complaint in this matter alleges that the Ballot Project, a Section 527 organization that was active during the 2004 election cycle, violated the Act by failing to register and report as a political committee. Specifically, the complaint alleges that the Ballot Project retained and recruited law firms to remove Ralph Nader and Peter Miguel Camejo (“Nader-Camejo”) from the ballot in at least 18 states, spending at least \$331,398 for this purpose, and soliciting at least \$2 million more in free legal services from law firms that sued Nader. As discussed below, the Commission has determined to exercise its prosecutorial discretion and dismiss the allegation as to the Ballot Project.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

According to the complaint, The Ballot Project made expenditures of at least \$331,398 to influence the 2004 presidential election. Complaint at 18. The Complaint maintains that these expenditures focused on spending designed to prevent Nader-Camejo from qualifying for a ballot, and concludes that such spending was subject to the Act’s registration and reporting requirements, with which the Ballot Project failed to comply. Complaint at 13. In response to the complaint, the Ballot Project questions whether spending designed to prevent a federal candidate from qualifying for a ballot is an expenditure under the Act. Specifically, the Ballot Project contends that the Commission’s distinction between funding a ballot access challenge and the defense of that challenge found in its Advisory Opinions is unconstitutional, noting that

1 there "is no constitutionally sufficient justification for requiring a candidate to use funds raised
2 under the Act's limitations and prohibitions to advance a claim that an opponent's ballot access
3 efforts have not complied with state law, while allowing the opponent defending against the
4 challenge to use money raised outside of those same limitations and prohibitions." Ballot Project
5 Response at 16. It argues that such a distinction stands in sharp contrast to *Davis v. FEC*, 128 S.
6 Ct. 2759, 2774 (2008), where the Court stated that "imposing different contribution and
7 coordinated party expenditure limits on candidates vying for the same seat is antithetical to the
8 First Amendment." *Id.* Additionally, the Ballot Project contends that a ballot access challenge
9 undertaken independently of a candidate is outside of the purview of the Act, as it is "far more
10 removed from being for the purpose of influencing a federal candidate than was the funding of
11 activity of the candidate in AO 1996-39 who was defending her place on the ballot." *Id.* at 17.

12 It appears that the Ballot Project is essentially a defunct organization. In response to the
13 complaint, the Ballot Project states that it dissolved on September 12, 2005. Ballot Project
14 Response at 2. The Commission has previously decided to take no further action where the
15 entity was essentially defunct, with minimal or no assets, and had been inactive for several years
16 with little prospect of resuming activity. *See* MUR 5534 (Business Alaska). In addition, while
17 the activity at issue occurred in 2004, the complaint was not filed until 2008. Thus, among other
18 reasons, the age of the alleged violations would create problems of proof and raise obstacles
19 under the five-year statute of limitations. Under similar circumstances here, the Commission has
20 determined to exercise its prosecutorial discretion and dismiss the allegations that the Ballot
21 Project violated 2 U.S.C. §§ 433 and 434. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

10044271491

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS****RESPONDENT: Americans for Jobs****MUR 6021****I. INTRODUCTION**

The complaint in this matter alleges that Americans for Jobs, a Section 527 organization that was active during the 2004 election cycle, violated the Act by failing to register and report as a political committee. Specifically, the complaint alleges that Americans for Jobs raised and spent \$1 million during the 2004 election cycle opposing Howard Dean's candidacy through television advertisements. As discussed below, the Commission has determined to exercise its prosecutorial discretion and dismiss the allegation as to Americans for Jobs.

II. FACTUAL AND LEGAL ANALYSIS

According to the complaint, Americans for Jobs made expenditures of \$1 million to influence the 2004 presidential election. Complaint at 19-20. Americans for Jobs reportedly ran television advertisements before the New Hampshire and South Carolina primary elections that challenged Howard Dean's foreign policy qualifications to be President.

The complaint concludes that Americans for Jobs was subject to the Act's registration and reporting requirements, but failed to comply. Complaint at 15. Americans for Jobs did not respond to the complaint.

The available information indicates that Americans for Jobs is either defunct or has ceased operations. Specifically, this organization filed its final IRS report in July 2004, reporting \$0 in receipts. In addition, while the activity at issue occurred in 2004, the complaint was not filed until 2008. Thus, among other reasons, the age of the alleged violations would create problems of proof and raise obstacles under the five-year statute of limitations. Under these

- 1 circumstances, the Commission has determined to exercise its prosecutorial discretion and
- 2 dismiss the allegations that Americans for Jobs violated 2 U.S.C. §§ 433 and 434(b). *See*
- 3 *Heckler v. Chaney*, 470 U.S. 821 (1985).

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS****RESPONDENT: America Coming Together****MUR 6021****I. INTRODUCTION**

The complaint in this matter alleges that America Coming Together ("ACT") violated the Federal Election Campaign Act of 1971, as amended ("the Act") in two ways. First, it alleges that America Coming Together ("ACT") made undisclosed excessive contributions and expenditures in connection with their coordinated efforts to deny Nader and Peter Miguel Camejo ("Nader-Camejo") ballot access in Oregon, in violation of 2 U.S.C. §§ 434(b) and 441a(1)(A). Second, the complaint alleges that ACT is a "political committee" that failed to register and report with the Commission in connection with activities during 2004 to benefit the Kerry Committee or oppose the Nader-Camejo campaign, in violation of 2 U.S.C. §§ 433 and 434(b). As discussed below, the allegation that ACT coordinated efforts to deny Nader-Camejo ballot access in Oregon is insufficient to warrant an investigation. Accordingly, the Commission has determined to find no reason to believe that ACT violated 2 U.S.C. §§ 434(b) and 441a(1)(A). The Commission has also determined to exercise its prosecutorial discretion and dismiss the other allegation pertaining to ACT's reporting of ballot access expenditures because ACT is no longer a functioning organization, and find no reason to believe that it failed to register in violation of 2 U.S.C. § 433 because it was, in fact, registered as a political committee.

II. FACTUAL AND LEGAL ANALYSIS

A. Allegations Relating to the Activities of ACT in Oregon

1. Facts

The complaint alleges that ACT planned and executed an effort to prevent Nader-Camejo from being placed on the ballot in the State of Oregon, resulting in undisclosed excessive contributions and expenditures. Complaint at 93. In support, the complaint refers to an August 16, 2004, blog entry from ACT employee William Gillis, who stated that ACT shared the Portland, Oregon, office space with political campaign staff from SEIU, and that he witnessed “higher echelons of both staffs” organize “a concerted effort among the ACT/SEIU staff to attack the Nader petition drive,” by signing petitions where petitioners were required to sign, and then scratching out the signatures, thereby invalidating the entire petition. Complaint at 74.

In response to these allegations, ACT states that the complaint fails to explain how its alleged activities in Oregon constituted a contribution, as it does not allege any contacts between ACT and either Kerry for President 2004, Inc. and Kerry-Edwards 2004, Inc. (collectively “the Kerry Committee”) or the Democratic National Committee (“DNC”), or any DNC, Kerry Committee, or Oregon Democratic Party involvement in the alleged ACT/SEIU joint effort to prevent ballot access for Nader-Camejo. ACT Response at 7. Further, ACT states that while Count 2 of the complaint alleges various financial transactions between SEIU and DNC, there is no allegation that any of these transactions or political activities were tied to this particular allegation, or that ACT had any contacts with the DNC, the Kerry Committee, or the Oregon Democratic Party. *Id.* at 8.

2. Analysis

In 2004, the Act limited contributions by political committees to any candidate or his or her authorized political committee with respect to any election for federal office, which, in the aggregate, exceeded \$5,000. 2 U.S.C. § 441a(2)(A) (2004). With respect to political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, the Act also limited contributions by political committees to \$15,000 per calendar year. 2 U.S.C. § 441a(2)(B).

The complaint does not allege, and the available information does not suggest, that ACT's activities in Oregon were coordinated with the Kerry Committee, the DNC, or any other entity. Indeed, the complaint's central allegation pertaining to ACT, that it shared facilities with another entity and organized "an attack" on the Nader petition drive, provides no link between such factual allegations and either the Kerry Committee or the DNC. As such, the available information does not indicate that the activities in question resulted in the making of an in-kind excessive contribution to either the Kerry Committee or the DNC.

In sum, the complaint's allegations as to ACT's activities contain insufficient supporting facts to provide a reason to believe that ACT made in-kind contributions to any political committees in connection with their alleged activities, and thus provide insufficient grounds to investigate. In addition, while the activity at issue occurred in 2004, the complaint was not filed until 2008. Thus, among other reasons, the age of the alleged violations would create problems of proof and raise obstacles under the five-year statute of limitations. Accordingly, the Commission has determined to find no reason to believe that America Coming Together made undisclosed excessive in-kind contributions in violation of 2 U.S.C. §§ 434(b) and 441a(1)(A).

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B. Allegation that ACT Failed to Register and Disclose Its Activities

According to the complaint, ACT received contributions and made expenditures in unspecified amounts to influence a federal election, including the compensation paid to ACT staffers who participated in ballot access challenges, Complaint at 95-97. The complaint also describes ACT as a nonfederal Section 527 organization that failed to register as a political committee. *Id.* The Complaint maintains that ACT's compensation paid to its staffers participating in ballot access challenges was subject to the Act's registration and reporting requirements, with which ACT failed to comply. *Id.* In response to the complaint, ACT first disputes the allegation that it had failed to register as a political committee. Specifically, ACT maintains that the complaint misidentifies it as a nonfederal "Section 527 organization," noting that it "was (and remains) *both a federal political committee and a nonfederal 527 organization.*" ACT Response at 6 (Emphasis in original). ACT refers to the Conciliation Agreement executed by the Commission and ACT in MURs 5403 and 5466 in August 2007, which noted that "ACT was established in July 2003 with federal and nonfederal accounts pursuant to 11 C.F.R. § 102.5." See MUR 5403 and 5466 Conciliation Agreement at Paragraph 1, page 2. ACT also states that those accounts are registered with, and report to, the Commission and the Internal Revenue Service ("IRS"). ACT Response at 6. The FEC disclosure database shows that ACT is in fact a registered political committee, and has been so since 2003. Therefore, the allegation that ACT failed to register as a political committee is incorrect. Accordingly, the Commission has determined to find no reason to believe that America Coming Together failed to register as a political committee in violation of 2 U.S.C. § 433.

With regard to whether ACT allegedly paid staffers for activities directed toward denying Nader-Camejo ballot access and whether such payments constituted expenditures under the act,

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1 the Commission has determined not to proceed further. ACT is essentially a defunct
2 organization. In response to the complaint, ACT stated that it “no longer exists as a functioning
3 organization” and has suspended ongoing active operations since 2005, with plans to terminate
4 its affairs upon completion of this matter. ACT Response at 12. The Commission has
5 previously decided to take no further action where the entity was essentially defunct, with
6 minimal or no assets, and had been inactive for several years with little prospect of resuming
7 activity. *See* MUR 5534 (Business Alaska). Moreover, ACT already paid a substantial civil
8 penalty for violations during the 2004 election cycle in MUR 5466. In addition, while the
9 activity at issue occurred in 2004, the complaint was not filed until 2008. Thus, among other
10 reasons, the age of the alleged violations would create problems of proof and raise obstacles
11 under the five-year statute of limitations. Under similar circumstances here, the Commission has
12 determined to exercise its prosecutorial discretion and dismiss the allegation that America
13 Coming Together violated section 434(b). *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT: Uniting People for Victory**

MUR 6021

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6
7 **I. INTRODUCTION**

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9 The complaint in this matter alleges that Uniting People for Victory ("UP for Victory"), a
10 Section 527 organization that was active during the 2004 election cycle, violated the Act by
11 failing to register and report as a political committee. Specifically, the complaint alleges that the
12 National Progress Fund spent approximately \$235,000 on advertisements, fact sheets, flyers,
13 letters to the editor and related material that expressly advocated the defeat of Nader and Peter
14 Miguel Camejo ("Nader-Camejo"). As discussed below, the Commission has determined to
15 exercise its prosecutorial discretion and dismiss the allegation as to Uniting People for Victory.

16 **II. FACTUAL AND LEGAL ANALYSIS**

17 According to the complaint, Up for Victory made expenditures of \$235,000 to influence
18 the 2004 presidential election. Complaint at 14-15. The complaint concludes that Up for
19 Victory was subject to the Act's registration and reporting requirements, but failed to comply.
20 Complaint at 15. Up for Victory did not respond to the complaint.

21 The available information indicates that Up for Victory is either defunct or has ceased
22 operations. Specifically, this organization filed its final IRS report in January 2006, reporting \$0
23 in receipts. In addition, while the activity at issue occurred in 2004, the complaint was not filed
24 until 2008. Thus, among other reasons, the age of the alleged violations would create problems
25 of proof and raise obstacles under the five-year statute of limitations. Under these
26 circumstances, the Commission has determined to exercise its prosecutorial discretion and

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- 1 dismiss the allegations that Uniting People for Victory violated 2 U.S.C. §§ 433 and 434(b). *See*
- 2 *Heckler v. Chaney*, 470 U.S. 821 (1985).

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT: National Progress Fund**

MUR 6021

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7 **I. INTRODUCTION**

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9 The complaint in this matter alleges that the National Progress Fund, a Section 527
10 organization that was active during the 2004 election cycle, violated the Act by failing to register
11 and report as a political committee. Specifically, the complaint alleges that the National Progress
12 Fund raised and spent at least \$516,334 and produced and broadcast at least eight different radio
13 and television commercials, each of which expressly advocated against the election of Nader and
14 Peter Miguel Camejo. As discussed below, the Commission has determined to exercise its
15 prosecutorial discretion and dismiss the allegation as to the National Progress Fund.

16 **II. FACTUAL AND LEGAL ANALYSIS**

17 According to the complaint, The National Progress Fund made expenditures of \$516,334
18 to influence the 2004 presidential election. Complaint at 11.

19 The complaint concludes that the National Progress Fund was subject to the Act's
20 registration and reporting requirements, but failed to comply. Complaint at 13. The National
21 Progress Fund did not respond to the complaint.

22 The available information indicates that the National Progress Fund is either defunct or
23 has ceased operations. Specifically, this organization filed its final IRS report in March 2006,
24 reporting \$0 in receipts. In addition, while the activity at issue occurred in 2004, the complaint
25 was not filed until 2008. Thus, among other reasons, the age of the alleged violations would
26 create problems of proof and raise obstacles under the five-year statute of limitations. Under
27 these circumstances, the Commission has determined to exercise its prosecutorial discretion and

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- 1 dismiss the allegations that the National Progress Fund violated 2 U.S.C. §§ 433 and 434(b). *See*
- 2 *Heckler v. Chaney*, 470 U.S. 821 (1985).

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